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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,438	01/22/2004	Pat Corry	243.1001US	5175
23280	7590	09/10/2007		
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			EXAMINER A, PHI DIEU TRAN	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 09/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/762,438	Applicant(s) CORRY, PAT	
	Examiner Phi D. A	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25, 27, 28 and 30-38 is/are pending in the application.
- 4a) Of the above claim(s) 17-23 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 24, 25, 27, 28, 30-33 and 35-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/19/07 has been entered.

1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

This policy applies to the limitation of “ constructed by injection molding”.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-9, 12-16, 24-25, 30, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gust (3123868) in view of Smith (3046613) and Scallon (3011422).

Gust shows a protector for a window well comprising a hood (12) in the shape of a quarter sphere comprising a first and second portion, the first portion (see attached) of the hood about perpendicular to a base (bottom surface of part 13), the second portion sloped to deflect

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precipitation from the first portion, a first outward rim flange (16) extending from the top of the hood for securing the hood to a foundation, a second outward rim flange (15) extending from the bottom of the hood for covering the window well, a plurality of securing member (18), the hood being a single piece, the hood is transparent, plastic, the second outward rim flange covering the entire window well,

Gust does not show the first portion comprising a plurality of slits angled through the first portion.

Smith discloses forming slits, opening, slots (col 3 lines 21-27) through the cover to allow for the ventilation of the window well.

Scallon (figure 1, 2) discloses slits angled through a first portion to enable ventilating air spaces in building structures while preventing the ingress of rain or other precipitation.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show a plurality of slits angled through the first portion because having a plurality of slits through the first portion on the well cover would allow ventilation of the well as taught by Smith, and having the slits angled on the cover would enable the ventilation of air spaces in building structures while preventing the ingress of rain or other precipitation as taught by Scallon.

4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gust (3123868) in view of Smith (3046613) and Scallon (3011422).

Gust shows a protector for a window well comprising a hood (12) in the shape of a quarter sphere comprising a first and second portion, the first portion (see attached) of the hood about perpendicular to a base (bottom surface of part 13), the second portion sloped to deflect

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precipitation from the first portion, a first outward rim flange (16) extending from the top of the hood for securing the hood to a foundation, a second outward rim flange (15) extending from the bottom of the hood for covering the window well, a plurality of securing member (18), the hood being a single piece, the hood is transparent, plastic, the second outward rim flange covering the entire window well.

Gust does not show a plurality of slits angled through the first portion, a hinge coupled to the second portion.

Scallon (figure 1, 2) discloses slits angled through a first portion to enable ventilating air spaces in building structures while preventing the ingress of rain or other precipitation.

Smith (figure 2) shows forming slits, opening, slots (col 3 lines 21-27) to allow for the ventilation of the window well, a hinge coupled to a second portion of a window well cover to allow the cover to be opened when desired.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show a plurality of slits angled through the first portion, a hinge coupled to the second portion because having a plurality of slits on the well cover would allow ventilation of the well as taught by Smith, and having a hinge at the second portion would allow for the cover to be opened when access to the window well is desired as taught by Smith, and having the slits angled on the cover would enable the ventilation of air spaces in building structures while preventing the ingress of rain or other precipitation as taught by Scallon

5. Claims 32-33, 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gust (3123868) in view of Smith (3046613), and Scallon (3011422).

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Gust as modified shows all the claimed limitations except for a hinge secured to the first outward rim flange.

Smith (figure 2) further shows a hinge a hinge secured to the first outward rim flange to allow the cover to be opened when desired.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's modified protector to show a hinge secured to the first outward rim flange because it would allow for the cover to be opened when access to the window well is desired as taught by Smith.

6. Claims 1-2, 4-7, 9, 10, 12-13, 15, 24, 25-26, 28, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackes (4330500) in view of Smith (3046613) and Scallon (3011422).

Mackes (figure 2) shows a protector for a window well comprising a hood (12) in the shape of a quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base, the second portion sloped to deflect precipitation from the first portion, a first outward rim flange (24') extending from the top of the hood for securing the hood to a foundation, a second outward rim flange (20' or 28) extending from the bottom of the hood for covering the window well, the hood being a single piece, the hood is transparent, plastic, the second outward rim flange covering the entire window well, the hood and flanges being plastic and one piece.

Mackes does not show the first portion comprising a plurality of slits angled through the first portion.

Smith discloses forming slits, opening, slots (col 3 lines 21-27) to allow for the ventilation of the window well.

Scallon (figure 1, 2) discloses slits angled through a first portion to enable ventilating air spaces in building structures while preventing the ingress of rain or other precipitation.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show a plurality of slits because having a plurality of slits on the well cover would allow ventilation of the well as taught by Smith, and the slits being angled through the first portion of the cover would enable the ventilation of air spaces in building structures while preventing the ingress of rain or other precipitation as taught by Scallon.

7. Claims 3, 8, 11, 14, 16, 27, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackes (4330500) in view of Smith (3046613), Hoyt (3413769) and Scallon (3011422).

Mackes (figure 2) shows a protector for a window well comprising a hood (12) in the shape of a quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base, the second portion sloped to deflect precipitation from the first portion, a first outward rim flange (24') extending from the top of the hood for securing the hood to a foundation, a second outward rim flange (20' or 28) extending from the bottom of the hood for covering the window well, the hood being a single piece, the hood is transparent, plastic, the second outward rim flange covering the entire window well, the hood and flanges being plastic and one piece.

Mackes does not show the first portion comprising a plurality of slits angled through the first portion, a plurality of securing members.

Smith discloses forming slits, opening, slots (col 3 lines 21-27) to allow for the ventilation of the window well.

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Scallon (figure 1, 2) discloses slits angled through a first portion to enable ventilating air spaces in building structures while preventing the ingress of rain or other precipitation.

Hoyt shows a plurality of securing members (94) securing the first rim flange to a wall.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show a plurality of slits because having a plurality of slits on the well cover would allow ventilation of the well as taught by Smith, and the slits being angled through the first portion of the cover would enable the ventilation of air spaces in building structures while preventing the ingress of rain or other precipitation as taught by Scallon, and having a plurality of securing members would allow for the securing of the first rim flange to the wall as taught by Hoyt.

8. Claims 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mackes (4330500) in view of Smith (3046613), Hoyt (3413769) and Scallon (34).

Mackes as modified shows all the claimed limitations except for a hinge secured to the first outward rim flange.

Smith further shows a hinge secured to the first outward rim flange to allow for the opening of the cover when desired.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mackes's modified protector to show a hinge secured to the first outward rim flange because it would allow for the cover to be opened when access to the window well is desired as taught by Smith.

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Response to Arguments

1. Applicant's arguments with respect to claims 1-16, 24-25, 27-28, 30-33, 35-38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different ventilation slit designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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8/27/07